

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HAMDAN ABDULLAH MOHAMAD

Petitioner/Plaintiff

Against-

ALBERTO GONZALES, Attorney General
of the United States;
MARY ANN GANTNER, District Director,
New York Office, Department of Homeland Security;
U.S. Citizenship and Immigration Services;

Respondents/ Defendants

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COMPLAINT FOR WRIT OF MANDAMUS

To the Honorable Judges of Said Court:

Plaintiff, Hamdan Abdullah Mohamad, through undersigned counsel, allege as follows:

INTRODUCTION

1. This is a civil action brought pursuant to 28 U.S.C. §1331, and 28 U.S.C. §1361, to redress the deprivation of rights, privileges and immunities secured to the Plaintiff to compel Defendants to perform a duty Defendants owe to Plaintiff. Jurisdiction is also conferred by 5 U.S.C. §701.
2. This action is brought to compel Defendants and those acting under them to take action on the Applications to Adjust Status, Form I-485, in order for Plaintiff, to become Permanent Residents the United States.
3. Plaintiff is eligible to have his Applications adjudicated.
4. Defendants, the Department of Homeland Security and U.S. Citizenship and Immigration Services, are charged by law with the statutory obligation to adjudicate these Applications to Adjust Status, Form I-485.
5. Venue is proper under 28 USC §1391(e) because the Plaintiff resides in this district and no real property is involved in this action.

FACTS

6. Plaintiff is a citizen of Yemen. He is the beneficiary of an Alien Relative Petition, Form I-130, which was approved on March 13, 2001. The Plaintiff's United States citizen wife filed the Alien Relative Petition. *See* Exhibit A (copy of Form I-130 Approval Notice).
7. Based upon the approved I-130, on March 19, 2004, the Plaintiff applied to adjust his status to

that of Permanent Resident Aliens by submitting Forms I-485. *See* Exhibit B (copy of Plaintiff's I-485 applications).

8. On July 26, 2004, the Plaintiff and his wife appeared and were interviewed by Officer Dore of the U.S. Citizenship and Immigration Services, in New York, New York, pursuant to the adjustment of status process. *See* Exhibit C (copy of Interview Notices).

9. At the end of the interview, Officer Dore informed the Plaintiff that he had two "A" files, and that only one was in her office at the time.

10. Officer Dore further informed the Plaintiff that she would order his other A file, and approve his application upon its arrival.

11. It has now been over two years since Plaintiff was interviewed by Officer Dore, and his Application to Adjust Status, Form I-485, have now been pending for over three years. Plaintiff has made several requests to determine the status of his application and the delays associated with its approval, but have yet to receive any response from any governmental agency.

CLAIMS

1. Defendants have willfully and unreasonably delayed in, and have refused to, adjudicate Plaintiff's Applications to Adjust Status, Form I-485, thereby depriving the Plaintiff of the benefit of becoming Permanent Residents of the United States, and the peace of mind he is entitled to;

2. Defendants owe Plaintiff a duty to adjudicate his Application, and have unreasonably failed to perform that duty;

3. Plaintiff has exhausted any administrative remedies that may exist.

WHEREFORE, Plaintiff prays that the Court:

1. Compel Defendants and those acting under them to perform their duty to adjudicate Plaintiff's Application;

2. Grant such other and further relief as this Court deems proper under the circumstances; and

3. Grant Attorney's fees and costs of Court to Plaintiff under the Equal Access to Justice Act.

Respectfully submitted this August 9, 2006.

Genet Getachew
Attorney for the Plaintiff
26 Court Street, Suite 1902
Brooklyn, New York 11242
Tel: (718) 694 9434
Fax: (718) 246 9186

AFFIDAVIT OF SERVICE

I certify that on August 10, 2006, one copy of an original SUMMONS IN A CIVIL CASE along with COMPLAINT FOR WRIT OF MANDAMUS was served via U.S. Postal Service for Certified Mail Receipt to:

Alberto Gonzales
Attorney General of United States
U.S. Department of Justice
U.S. Attorney's Office
86 Chambers Street, 3rd Floor
New York, NY 10007

Alberto Gonzales
Attorney General of United States
Civil Division, Office of Immigration Litigation
P.O. Box 878, Ben Franklin Station
Washington, DC 20044

Mary Ann Gantner
District Director
Department of Homeland Security
U.S. Citizenship & Immigration Service
Jacob Javits Federal Building
26 Federal Plaza
New York, NY 10278

Genet Getachew